

JUL 13 1994

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 93-241
DARRELL BRYAN	)	File No. BPH-920109MA
SBH PROPERTIES, INC.	)	File No. BPH-920123MD
	)	
	)	
	)	
For Construction Permit for		
New FM Channel 276A		
Tusculum, Tennessee		

To: Honorable John M. Frysiak  
Administrative Law Judge

NOTIFICATION OF WITNESSES REQUESTED FOR CROSS-EXAMINATION

SBH Properties, Inc. ("SBH") by counsel herewith submits its notification of witnesses requested for cross-examination at the hearing scheduled to commence on July 26, 1994, and requests that Darrell Bryan make the following witnesses (all of whom propose to offer direct testimony) available for cross-examination for the reasons stated below:

Stan Puckett  
Darrell Bryan  
Richard H. Mertz

1. Mr. Puckett's cross-examination testimony is necessary to elicit relevant testimony regarding matters addressed in his deposition testimony, which conflict with his written testimony; to elicit relevant testimony regarding matters addressed in the deposition testimony and admissions of Darrell Bryan, which conflict with Mr. Puckett's written testimony; to elicit more

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detailed testimony regarding the nature of the documentation which the Bank reviewed in relation to the proposed loan and to elicit relevant testimony regarding the the reliability of that documentation and the financial information contained therein; to elicit relevant testimony regarding the position of the Bank with regard to the use of the proceeds of the proposed loan to pay or reimburse the costs incurred by Bryan in the prosecution of his application for construction permit; to elicit more detailed testimony regarding the status of Bank's outstanding loan to Burley Broadcasters, Inc. and Bryan's proposal to dispose of WSMG(AM), the sole asset of Burley Broadcasters, Inc., in the event his application is granted; and to elicit other relevant testimony based on evidence developed in discovery and through investigation.

2. Mr. Bryan's cross-examination testimony is necessary to elicit testimony regarding matters addressed in Bryan's deposition testimony which conflict with his written testimony, as well as other aspects of his direct written case; to elicit testimony regarding matters addressed in statements which Bryan has given under penalty of perjury which conflict with his written testimony, as well as other aspects of his direct written case; to elicit testimony regarding unidentified sources of information which Bryan claims to have relied upon in developing his financial propsoal; to elicit testimony regarding documentary evidence which undermines Bryan's written testimony, as well as other aspects of his direct written case; to elicit testimony

designed to clarify continuing uncertainty regarding Bryan's financial proposal; and to elicit other relevant testimony based on evidence developed in discovery and through investigation.

3. Mr. Mertz's cross-examination testimony is necessary to explore his qualifications, the unstated bases of his assumptions, his involvement, if any, in the development of Bryan's technical and financial proposals and the validity of his contentions. As a fundamental matter, Mr. Mertz is a surprise witness. SHB has no knowledge, whatsoever, regarding his relationship, if any, to Bryan. In that regard SBH has never heard of Mr. Mertz. His name has not been mentioned in any document produced by Bryan or in any testimony given to date by Bryan, Walter Stone or Stan Puckett in this proceeding (each of whom has been deposed). Bryan has testified that he developed his technical and financial proposal through discussions with his technical consultant, Mr. Lysiak, his then attorney, Mr. Hayes, and Rick Johnson of Hall Electronics of Charlottesville, Virginia. No mention has ever been made regarding any involvement of Mr. Mertz, although inquiries have been made in the context discovery which would have required him to be identified, had he been involved. In sum, SBH has been denied any discovery with respect to Mr. Mertz's testimony and, if his direct testimony is to be admitted, SBH clearly is entitled to cross-examine him. In addition, SBH would in any event have the right to test the validity of Mertz's contentions, as well as the unsupported assumptions which are necessary to support those contentions.

4. In lieu of requesting that Walter J. Stone be made available for cross-examination, SBH has entered into a stipulation with Bryan: (a) to the receipt of the transcript of Mr. Stone's deposition testimony in evidence and (b) to a specific breakdown of the \$ 11,500.00 price quote which Mr. Stone provided Bryan. SBH intends to confer with counsel for Bryan to determine whether certain matters may also be addressed by means of stipulation and/or through the admission of deposition testimony (or portions thereof) in lieu of requiring the live testimony of Mr. Puckett. However, absent a mutually agreeable arrangement in that regard, good cause for requiring Bryan to make each of the foregoing witnesses available for cross-examination has been demonstrated.

Respectfully Submitted

SBH PROPERTIES, INC.

By: 

Timothy K. Brady  
Its Attorney

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July 13, 1993

CERTIFICATE OF SERVICE

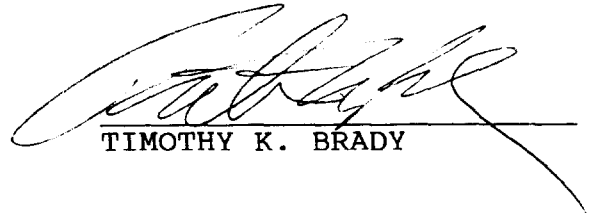
I, Timothy K. Brady, hereby certify that I have this 12th day of July, 1994, served a copy of the foregoing Notification of Witnesses Requested for Cross-examination by Federal Express overnight service for delivery on July 13, 1994 (except as noted) upon the following:

Honorable John M. Frysiak  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, NW, Room 223  
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Robert A. Zuaner, Esq. \*\*  
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(Counsel for Darrell Bryan)

\*\* Via First Class Mail, by  
agreement with Bureau counsel



TIMOTHY K. BRADY